

# **Exhibit 2**

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*By UPS Overnight and email*

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Re: Your November 3, 2021 "Notice of Nike's Intellectual Property Rights"

Dear Mr. Fogarty:

I write as follow-up to my November 10, 2021 letter regarding Nike's November 3, 2021 letter "Notice of Nike's Intellectual Property Rights." As I stated before, lululemon respects intellectual property and takes this matter seriously.

We have completed an initial review of the patents identified in Nike's notice (U.S. Patent Nos. 8,620,413; 9,278,256; 9,259,615; 10,188,930; 10,232,220; and 10,923,225 (collectively, the "Patents")) and associated claim charts. Based on our analysis and as described below, we do not believe that the MIRROR and MIRROR app practice the Patents' claims.

**1. U.S. Patent No. 8,620,413**

Claim 1: An apparatus comprising:

a processor; and

a memory storing instructions that, when executed by the processor, cause the apparatus at least to:

prompt a user to exercise at a plurality of successive exertion levels,  
wherein an exertion level is based on a level of physical fitness of a user;

determine a plurality of heart rate zones based on first heart rate  
measurements received from a sensor while the user exercises at the plurality  
of successive exertion levels;

generate a prompt instructing a user to exercise while maintaining  
heart rate within a particular one of the plurality of heart rate zones;

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process second heart rate measurements received from the sensor subsequent to generating the prompt; and  
 determine whether the second heart rate measurements are within the particular heart rate zone.

For the limitations reciting “prompt[ing] a user to exercise at a plurality of successive exertion levels” and “determin[ing] a plurality of heart rate zones based” on data from the exercise at the plurality of successive exertion levels, Nike’s claim chart cites the MIRROR displaying a target heart zone (Exhibit A: slide 6), a screenshot of the MIRROR app asking the user to select his or her fitness level (Exhibit A: slide 6), and a listing of the MIRROR’s supported heart rate monitors (Exhibit A: slide 7). These features do not meet the claim limitations as they do not determine any heart rate zones based on exercise at successive exertion levels. The MIRROR does not use the claim’s technique for determining heart rate zones.

## 2. U.S. Patent No. 9,278,256

Claim 11: A method comprising:

receiving a prompt inviting a first user to participate in a challenge, wherein the challenge includes a competition between the first user performing athletic activities at a first location and a second user performing athletic activities at a second location different to, and remote from, the first location;

determining an amount of athletic activity performed by the first user based on sensor data received from a sensor worn on an appendage of the first user; and  
receiving data from a second sensor indicative of an amount of athletic activity performed by the second user;

determining whether the challenge has been met by the first user based on a comparison of the amount of athletic activity performed using the first user to the amount of athletic activity performed by the second user; and

continuously generating and simultaneously communicating in real-time to the first user at the first location and the second user at the second location, an interface indicating whether the challenge has been met.

The claim requires “sensor data received from a sensor worn on an appendage of the *first user*” and “receiving data from a second sensor indicative of an amount of athletic activity performed by a *second user*.” For these limitations, Nike’s claim chart cites the MIRROR displaying “FACE OFF” (Exhibit B: slide 4) and a listing of the MIRROR’s supported heart rate monitors (Exhibit B: slide 5). Nike’s claim chart does not show or explain how a MIRROR allegedly receives sensor data from a sensor worn by the first user *and* from a sensor worn by a second user at a different location than the first user, as required in the claim. Moreover, Nike’s claim chart does not show how a MIRROR allegedly communicates “an interface indicating whether the challenge has been met” to two separate

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locations. The MIRROR's Face Off feature does not provide the functionality recited in this claim.

### 3. U.S. Patent No. 9,259,615

Claim 1: A method, comprising:  
     receiving athletic activity data from a device configured to be worn by a user;  
     receiving an activity time period;  
     receiving a first activity goal for the activity time period;  
     determining, at a processor, whether the received athletic activity data exceeds the first activity goal for a predetermined number of consecutive activity time periods; and  
     presenting a streak reward to the user when the received athletic activity data exceeds the first activity goal for the predetermined number of consecutive activity time periods.

The claimed "streak reward" is based on "exceed[ing] the first activity goal for a predetermined number of consecutive activity time periods." Nike's claim chart, however, does not identify an award or describe how Nike believes that the MIRROR or MIRROR app track activity goals over consecutive days. The claim chart only shows a screenshot of the mobile application displaying weekly progress with "2/4 target sessions completed" (Exhibit C: slide 5). Neither the MIRROR nor the MIRROR app provide a "streak award" or other indication of whether activity goals are exceeded for "consecutive activity time periods."

### 4. U.S. Patent No. 10,188,930

Claim 1: A computer-implemented method comprising:  
     providing first instructions to a user to perform a first athletic movement;  
     receiving, from a sensor, first activity data representing the first athletic movement;  
     calculating with a processor, based on the first activity data, a first combinatory fitness-athleticism score;  
     providing, in response to a triggering event, second instructions to the user to perform a second athletic movement;  
     receiving, from the sensor, second activity data representing the second athletic movement;  
     calculating, with the processor, based on the second activity data, a second combinatory fitness-athleticism score,  
     wherein the first and the second combinatory fitness-athleticism scores each comprise a fitness sub-score and a separate athleticism sub-score of the user,

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wherein the fitness sub-score is calculated, by the processor, using one or more of an endurance fitness attribute, a flexibility fitness attribute and a strength fitness attribute of the user, and

wherein the athleticism sub-score is calculated, by the processor, using one or more of a speed athleticism attribute, an agility athleticism attribute, a reaction athleticism attribute, a power athleticism attribute and a balance athleticism attribute of the user.

In the claim, “the first and the second combinatory fitness-athleticism scores each comprise a fitness sub-score and a separate athleticism sub-score.” Nike’s claim chart, however, only cites the MIRROR displaying the number of calories burned (*e.g.* 78) and the user’s heart rate (*e.g.* 121 BPM) (Exhibit D: slide 11). Each of these values are single measurements displayed individually. Neither the MIRROR nor the MIRROR app combine these values to create a “combinatory fitness-athleticism scores” as defined by the claim language.

#### **5. U.S. Patent No. 10,232,220**

Claim 11: An apparatus comprising:

a processor; and

a non-transitory, computer-readable medium storing computer-readable instructions that, when executed, cause the apparatus to:

record athletic activity performed by a user; receive a sharing option selection configured to allow the recorded athletic activity to be shared; and

in response to receiving the sharing option selection, transmitting workout information associated with the recorded athletic activity to a network page of a social networking site viewable by one or more other users.

Nike’s claim chart only states “[t]he Mirror and the Mirror App allow workout information (*e.g.*, calories burned, average heart rate, total duration) to be viewed on social networking sites (*e.g.*, Twitter, Instagram)” and shows screenshots from the Twitter mobile application and Instagram mobile application corresponding to a user’s workout (Exhibit E: slide 7). The MIRROR app allows a user to share a screen shot of a completed workout with another app using the iOS share feature. The MIRROR app does not transmit workout data to any network page of a social networking site or even a social network in general. Additionally, the claim (consistent with the specification) distinguishes between “*a network page of a social networking site*” and the social networking site itself. The mere ability to send screenshots to a social networking app is not sufficient to meet the claim language. Nike’s claim chart does not identify any “network page.”

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**6. U.S. Patent No. 10,923,225**

Claim 1: A method comprising:

establishing, by a sensor device, data communication with a piece of workout equipment;

transmitting, by the sensor device and to the piece of workout equipment, a first set of data for operating a first function of the piece of workout equipment; and

transmitting, by the sensor device and to the piece of workout equipment, a first set of activity data corresponding to an activity performed by a user during a first time period, wherein the piece of workout equipment is configured to display the first set of activity data.

Nike's claim chart seemingly acknowledges that neither the MIRROR nor the MIRROR app is a "sensor device" that the claim requires to perform the recited steps. Rather, the claim chart simply states "[t]he *Apple Watch* can operate the Mirror" and only shows screenshots of the Apple Watch corresponding to emoji selection, exercise control, and volume control (Exhibit F: slide 5 (emphasis added)). Additionally, the mere ability to pause or adjust the volume of a workout is insufficient to meet the claim limitation requiring "a first set of data for operating a first function of the piece of workout equipment." The patent makes clear that the first data for operating the workout equipment is data relating to a "workout or athletic performance setting." (*See, e.g.*, 19:34-67.) Neither the MIRROR nor the MIRROR app provide this feature. The patent describes control and display of media content separately from operating the workout equipment. (*See, e.g.*, 7:61-8:43.)

In light of the above (and the claims' apparent invalidity issues), lululemon does not believe that Nike's patents are relevant to the MIRROR and MIRROR app. In the same spirit of cooperation that you offered in your November 3, 2021 letter, however, lululemon is open to discussing this matter further to the extent necessary to resolve it.

Best regards,



Diek O. Van Nort  
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cc. Stefani Shanberg, Morrison & Foerster LLP